

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

Crl.MC.No. 1838 of 2007()

C.C.NO.393/05 OF J.F.C.M. COURT, CHAVAKKAD

PETITIONER: ACCUSED:

FATIMA,SUHARA HYDER, W/O.HYDER ALI,
NO.50/43-J, JAWAN'S CROSS ROAD NO.5,
9 HAVEN, ELAMAKKARA, KOCHI-26.

BY ADV. SRI.C.D.JOHNY
SMT.MEREENA JOSEPH

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 07/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 1838 of 2007

Dated this the 7th day of June, 2007

ORDER

The petitioner, a woman, faces indictment in a prosecution under Section 138 of the N.I. Act. The petitioner was not available and did not appear before the learned Magistrate. Consequently a warrant of arrest has been issued against the petitioner. She now wants to appear before the learned Magistrate and plead guilty to the allegations under Section 138 of the N.I. Act. But she apprehends that her application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. She further apprehends that the learned Magistrate may not consider the decision in Anilkumar v. Shammy (2002 (3) KLT 852) while deciding on the question of sentence to be imposed. In these circumstances she prays that appropriate directions may be issued to the learned Magistrate under Section 482 Cr.P.C.

2. I find the apprehensions of the petitioner to be without any merit. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances

under which she could not earlier appear before the learned Magistrate. If she wants to plead guilty, she can do the same. Needless to say, the learned Magistrate must consider the same expeditiously. I have no reason to assume that the learned Magistrate would not abide by the decision relating to imposition of sentence in a prosecution under Section 138 of the N.I. Act. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

3. This Crl.M.C. is accordingly dismissed, but subject to the above observations/directions. I may hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

4. Hand over copy of the order to the learned counsel for the petitioner.

